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Attorneys for City of Pocatello

**BEFORE THE DIRECTOR
 OF THE DEPARTMENT OF WATER RESOURCES
 OF THE STATE OF IDAHO**

IN THE MATTER OF THE REQUEST FOR)
 ADMINISTRATION IN WATER DISTRICT 120)
 AND THE REQUEST FOR DELIVERY OF WATER)
 TO SENIOR SURFACE WATER RIGHTS BY)
 A&B IRRIGATION DISTRICT,)
 AMERICAN FALLS RESERVOIR DISTRICT #2,)
 BURLEY IRRIGATION DISTRICT,)
 MILNER IRRIGATION DISTRICT,)
 MINIDOKA IRRIGATION DISTRICT,)
 NORTH SIDE CANAL COMPANY, AND)
 TWIN FALLS CANAL COMPANY)

MOTION FOR STAY

The City of Pocatello respectfully requests that the Director stay all deadlines set in the Third Amended Scheduling Order until he determines whether a hearing should be held in this matter prior to final resolution of Case No. CV- 2005-600, in which the Gooding County District Court has entered an order on summary judgment.

This motion is based upon the following recent developments:

1. On May 19, 2006, the Director entered his Third Amended Scheduling Order, which establishes a series of deadlines, leading up to a hearing on September 26, 2006. Of immediate concern, the deadline for completing expert depositions currently is set for June 30, 2006.
2. The hearing before the Director has been set, and is to be conducted, under procedures provided in the Conjunctive Management Rules ("CMR"). Substantively, the hearing is expected to address what is required under the CMR in response to a delivery call made by the Surface Water Coalition.
3. On June 2, 2006, Judge R. Barry Wood entered an Order on Plaintiffs' Motion for Summary Judgment in Case CV-2005-0000600, Gooding County, Idaho. The Gooding County Order addresses the CMR and concludes:

"Because (1) the Director has a clear legal duty to administer water in accordance with priority, (2) the CMR's do not contain reasonable and objective standards, omit significant concepts of the law; try to re-write others; and fail to establish a time frame for administration commensurate with the needs for irrigation; the result is a diminishment of vested rights. ... The end result is this Court must declare the CMR's, as written, are not in accord with the statute authorizing the Director to promulgate rules, and the Rules are also otherwise unconstitutional and void in the respects noted herein."

The Order is virtually certain to be appealed by one or more of the parties to that case, possibly including the Director, who is a defendant in that proceeding.

4. The Gooding County Order, until reviewed by the Idaho Supreme Court, leaves both substantive and procedural provisions of the CMR in doubt. Among other things, the Gooding County Order presents the question of whether the Director can and should proceed to a hearing in this matter, because the hearing is based upon the CMR.
5. Proceeding with preparation for a hearing -- particularly proceeding with expert depositions -- will be time consuming and expensive. To date, depositions have been scheduled but have not yet begun. If the Director decides not to conduct a hearing,

pending further resolution of the issues presented by the Gooding County Order, further effort towards trial preparation, including depositions, would be wasteful and would need to be repeated in the future.

6. The Director should be given the opportunity to consider whether to proceed to a hearing in this matter, and if so, on what basis, with briefing from the parties if this would assist him.

Wherefore, Pocatello requests the Director stay all deadlines set in the Third Amended Scheduling Order.

Respectfully submitted this 9th day of June 2006.

BEEMAN & ASSOCIATES, P.C.

By Josephine P. Beeman
Josephine P. Beeman

WHITE & JANKOWSKI, LLP

By Josephine P. Beeman
(for) Sarah A. Klahn

Attorneys for the City of Pocatello

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of June 2006, I caused to be served a true and correct copy of the foregoing document by FAX to the Department, and by regular U.S. Mail, postage prepaid, to:

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